

**Private Admonition - Board Case Nos. 63, 1998 and 10, 1999. Date of Sanction: May 17, 1999.**

A panel of the Preliminary Review Committee of the Board on Professional Responsibility offered a private admonition, with the condition of payment of costs of the investigation, to an attorney as a result of its finding that there was probable cause to conclude that the attorney had violated Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct ("Rules") in connection with his handling of one matter, as well as violated Rules 1.7, 1.9, 1.16 and 2.2 in connection with his handling of another matter. The attorney accepted the private admonition and admitted that he violated Rules 1.15, 1.7, 1.9, 1.16 and 2.2.

In Board Case No. 63, 1998, the attorney violated Rule 1.15(b). This was a debt renegotiation/bankruptcy avoidance matter in which the attorney represented a small business with serious credit problems. The small business entity intended to wind down and sell assets to pay its creditors. The attorney offered a compromised payment on a trade debt to a trade creditor. The trade creditor was represented by Pennsylvania counsel who dealt with the attorney on his client's behalf. That Pennsylvania attorney filed a disciplinary complaint with the ODC about the attorney because the Pennsylvania attorney felt that the attorney had made certain misrepresentations. The ODC investigated that complaint and concluded that the complaint should not be pursued.

The original compromised payment offered was \$878.00. Upon dismissal of the disciplinary matter, the attorney reneged on that offer and informed the Pennsylvania attorney that now only \$478.00 would be offered because the attorney had deducted \$400.00 "[the Pennsylvania attorney] cost [the attorney's] client by filing a frivolous action with the local Office of Disciplinary Counsel." This was entirely improper. First, the complaint had not been frivolous. Second, the attorney could not charge his client for the cost of responding to the ODC complaint. Third, the attorney could not "charge" the opposing party for the cost of responding to the ODC complaint.

The attorney therefore violated Rule 1.15(b) by failing to deliver to the trade creditor the full \$878.00 admittedly due and instead delivering \$478.00. Rule 1.15(b) states that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. It was improper to subtract \$400.00 for the alleged cost of responding to a disciplinary complaint. The PRC also considered that, in response to the ODC concerns, the attorney remitted the \$400.00 in dispute to the Pennsylvania attorney.

In Board Case No. 10, 1999, the attorney violated Rules 1.7, 1.9, 1.16 and 2.2. Since 1994, the attorney represented a corporate entity ("Corporation"). Shortly before the President and sole shareholder of the Corporation ("President") died, the attorney represented the President in connection with estate planning. That planning addressed, in part, the President's desire that the number two person at Corporation ("No. 2 Person"), be able to maintain control of the Corporation in the event that the President died. After the President died, the attorney was retained by his widow and the personal representative of his estate ("Personal Representative"), to represent her as the personal representative. Because the President had been domiciled in Maryland, the attorney also associated with Maryland counsel.

At the same time that he represented the Personal Representative, the attorney continued to represent the interests of the Corporation. The attorney did not consult with both the Personal Representative and the Corporation about the potential conflict of interest in his representation of both parties, nor did he obtain the necessary consent of both clients. After he was retained to represent the Personal Representative, she began to raise concerns and accusations about the Corporation and the No. 2 Person. As a result of the Personal Representative's accusations and concerns, the attorney withdrew from representing her as Personal Representative. However, he continued to represent the Corporation. It was only after the attorney became concerned about becoming a witness in the dispute between the Corporation and the estate that he referred the

Corporation to other Delaware counsel. However, he also continued to act on behalf of the Corporation. The attorney also represented others with interests adverse to the estate and the Personal Representative. Specifically, he represented two of President's children. (These individuals also retained Maryland counsel.) The attorney also represented the No. 2 Person.

Eventually, the attorney was formally asked by the Personal Representative to withdraw from his representation of parties whose interests were in conflict with those of the Personal Representative's interests and the interests of the estate. The attorney denied that he had any duties to the Personal Representative or the estate and continued to act as counsel for the parties whose interests were clearly adversarial to the interests of his former client. The Personal Representative re-asserted her position that the attorney's continued representation of the No. 2 Person and the President's children, or the Corporation was in violation of his professional obligations with respect to conflicts of interest. Nevertheless, the attorney continued to act as counsel to the No. 2 Person, as well as the President's children and the Corporation.

The attorney therefore violated Rules 1.7 and 1.9 in that a conflict of interest existed with respect to both current and former clients. In addition, by failing to withdraw from the representation of all parties when representation caused the attorney to violate his professional obligations, the attorney violated Rule 1.16. Finally, the attorney violated Rule 2.2 by improperly acting as an intermediary under circumstances not permitted, by the Rule.

In offering a private admonition, the PRC considered that the attorney had no prior disciplinary record. However, the PRC also considered that the attorney had voluntarily made certain changes in his practice in response to concerns voiced by the ODC.